IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2080 OF 1989

Govind Bhaurao Vaidya Petitioner

versus

The State of Maharashtra Respondent

Shri S.G.Karandikar for petitioner.

Ms.Vaidehi Mhaisapurkar, AGP for State.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 18th January 2006

PC :

1. Heard learned counsel for parties.

2. This petition under Article 227 of the Constitution of India is directed against an order passed by Maharashtra Revenue Tribunal, at Mumbai (for short referred to as "MRT") in Appeal No.6 of 1988. This appeal was directed against the order passed by Tahsildar and Surplus Land Determination Tribunal, Palghar (hereinafter referred to as "SLDT") in Ceiling Case No.CLN/SR/60, dated 20th June 1988. The

proceedings are under Maharashtra Agricultural Lands (Ceiling on holdings) Act, 1961 (hereinafter referred to as "Ceiling Act").

3. Very few facts need to be set out for appreciating the contentions of Shri Karandikar - learned counsel for petitioner.

4. The SLDT, Palghar took up for inquiry the holding of the petitioner-owner. The SLDT on the earlier occasion came to a conclusion that an area of 69 acres 25 gunthas and 4 ares is the surplus land which is available for distribution under the Ceiling Act from the total holding of the petitioner, which is about 123 acres and 8 gunthas. That order was challenged in the appeal and eventually up till this Court and the order of SLDT was set aside. The matter was remanded for fresh inquiry.

5. Upon fresh inquiry by the SLDT, Palghar, it once again concluded that the surplus holding of the petitioner is as above. That order is passed on 20th June 1988. The contention of the petitioner is that an area admeasuring about 20 acres is not capable of being used for agricultural purposes. That is liable to be

excluded while computing the total holding and therefore, the SLDT was requested to do so. In support of the contention that the land is not capable of being used for agricultural purposes and contradicting the report of the Talathi, a request was made by the petitioner to summon, from the office of Soil Conservation Department or any other competent authority, a report with regard to the character of the land and whether it is capable of being used for agricultural purposes or not. That request was made by written application which is on record of the SLDT.. My attention is invited to the application dated 27th November 1987 and 16th June 1988 to summon a report of the above nature.

6. The SLDT, Palghar concluded that the matter was adjourned from time to time to enable the petitioner to obtain such a report and to place it on record but despite several opportunities the report is not placed for consideration of SLDT, Palghar. Accordingly, the request for adjournment was rejected and the Tribunal proceeded to determine the surplus land. It confirmed that the area to be declared as surplus is 69 acres 25 gunthas and 4 ares out of total holding of the petitioner of about 123 acres and

25 gunthas.

7. This order of the SLDT was challenged by the petitioner in the abovementioned appeal by invoking jurisdiction of MRT u/s 33 of the Ceiling Act. This contention about land being incapable of being used for agricultural purposes, was reiterated before the MRT (appellate authority), Mumbai. The SLDT's order came to be confirmed in appeal and as regards the above contention, the MRT concluded that Soil Conservation Officer's report was not placed before the SLDT as well as MRT.. The MRT holds that there is correspondence with the said officer on this issue. That apart, the MRT observes that the question of determination of "Pot Kharaba lands" will not arise in the present case because of the choice/option exercised by the petitioner while filling up Form No.VII. Once the choice/option is exercised, then the issue no longer survives, is the conclusion of the MRT.. The above conclusion and order of SLDT is subject matter of challenge in this petition under Article 227 of Constitution of India.

8. The only contention raised by Shri Karandikar is that authorities were in error in rejecting

the request of the petitioner with regard to the nature of lands and an opportunity should have been given to the petitioner to substantiate his pleas by summoning report from either the Soil Conservation Officer or such other expert body. The request not being considered, results in manifest injustice and the total area which has been allowed to be retained and which has been declared as surplus, needs to be redetermined after giving such an opportunity. Shri Karandikar submits that orders of SLDT and MRT are vitiated by apparent errors because the petitioner was not at fault. The Soil Conservation Officer has, despite repeated letters and reminders, not forwarded his report to the authorities. The said letters were placed on record. It is not as if no attempt was made by the petitioner to call for a report from the Soil Conservation Officer. It is contended by Shri Karandikar that the request made by the petitioner to the Soil Conservation Officer was not granted on the ground that a direction or request from the SLDT alone would be taken cognizance of by the concerned Department.

9. Shri Karandikar submits that the petitioner is thus handicapped and for no fault on his part,

the SLDT proceeded ex-parte in the matter. Once such are the state of affairs then, the appellate authority namely MRT should have stepped in and issued appropriate directions in the interest of justice. However, the MRT, apart from rejecting petitioner's contention on this issue, refused to go into the same on the ground that the petitioner has already exercised his choice and option and selected a parcel of land for retention. In his submission, by mere filing up a form, the petitioner does not loose his right either of contending that the land is incapable of agricultural operations or requesting the authorities to go into such issues while determining the surplus land. All such rights under the Statute are not taken away by mere filling up of a form. In these circumstances, the orders of the authorities be set aside and the contention with regard to deletion of a piece of land from the total holding should be reconsidered.

10. Ms.Mhaisapurkar on the other hand states that all such contentions are deemed to have been given up. In any event, the contention of the petitioner is that only 20 acres out of total holding of 123 acres 8 gunthas is incapable of

being used for agricultural purposes. The extent/ceiling limit is 54 acres. The area in excess is 69 acres 25 gunthas 4 ares and merely because the petitioner raises a grievance about 20 acres land not being capable of agricultural operations, the entire matter cannot be reopened. In any event, if at all this Court is desirous of remanding the matter to SLDT, it should be directed to consider only a specific issue of 20 acres of land being incapable of agricultural operations and time limit be set for the same.

11. In the light of rival contentions, the only issue that falls for consideration is whether the area of 20 acres out of total holding of the petitioner is capable of being used for agricultural operations and therefore liable for exclusion while computing the ceiling limit prescribed by the Ceiling Act. It is not for this Court to go into the factual aspects. The matter has been pending from 1989 and no further steps including forfeiture of the lands to the Government were taken because of the interim orders passed in this petition. Consequently, the lands have not been made available for distribution. The very object and purpose for setting up a limit on holding of agricultural

lands by the Ceiling Act is defeated and frustrated by this enormous delay. That apart, the authorities would have been well advised in taking cognizance of the petitioner's request at the stage of determination of surplus land and that would have obviated all further proceedings. Instead, the petitioner has been blamed for the Soil Conservation Department report not being made available. The correspondence placed on record by the petitioner would show that it is not as if he was not following up the matter at all. If the Soil Conservation Officer was unable to assist the petitioner, then the least that is expected from the authorities is to have taken up the matter themselves with the Soil Conservation Department or some such agency which would have rendered assistance. That would have expedited determination of surplus and would have made the lands which are declared surplus, available for distribution expeditiously. Instead the SLDT proceeded to reject the application and decided the matter ex-parte. In my view, in stead of this Court going into factual aspects, it would be appropriate if a last opportunity is given to the petitioner to substantiate his pleas and setting up a time limit for the said purpose.

12. The matter would stand remanded to the SLDT, Palghar. The said authority to thereafter take up the matter for considering the issue as to whether 20 acres of land is capable of being used for agricultural purpose or not. The SLDT to seek report from the Soil Conservation Department. However, the Tribunal to undertake such exercise only with regard to Survey Nos.14, 18 and 19 admeasuring about 20 acres and decide the course of action including calling for a report from Soil Conservation Department, provided, the petitioner appears before the SLDT on 13th February 2006. The Tribunal shall, upon noticing the petitioner's appearance, call for a report from the Soil Conservation Department and Soil Conservation Department, Dahanu, District Thane will forward its report within a period of two months from the date of requisition of the SLDT, Palghar. Upon the report being forwarded, the SLDT shall notify a date for petitioner's appearance and forward to him or make available a copy of said report. It would be then open for the petitioner to make appropriate submissions. The entire exercise shall be completed by the SLDT, Palghar within a period of six months from the date of petitioner's appearance and in any event by 31st July 2006.

13. This order is passed only because of the contention of Shri Karandikar with regard to the denial of an opportunity by the SLDT as well as MRT.. All other contentions including the partition of lands before the appointed date have been rightly rejected and in any event, factual aspects cannot be gone into in the limited jurisdiction of this Court under Article 227 of Constitution of India.

14. Rule made absolute in above terms with no order as to costs.

(S.C.DHARMADHIKARI, J.)